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1807.

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SOME

THOUGHTS

ON THE

PRESENT DISPUTE

BETWEEN

GREAT BRITAIN AND AMERICA.

BY THOMAS GREEN FESSENDEN.

"Strike, but HEAR ME;" sacrifice me;
But SPARE MY COUNTRY.

PHILADELPHIA:

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SOME THOUGHTS,

&c. &c.

THE history of America, and indeed that of the human race, since the annihilation of the Roman empire, and the era of the dark ages, has never exhibited a crisis so alarming as the present. This fact is tested by every article of political intelligence which we receive from the old continent. France has gained more power, and has made greater strides towards universal empire in a few years, than ancient Rome, whose example she affects to imitate, in a number of centuries. Great Britain is forced to call into action all her energies, moral and physical, in order to give herself a bare and dubious chance of existence as an independent nation.*

* See a pamphlet, written in England and republished in America by Samuel Bradford, Philadelphia, entitled "The Dangers of the Country."

Should she fall, and fall she must with the present disposition and temper of mankind towards her, all her weight, physical and moral, will be thrown into the scale of France, already so alarmingly preponderant. Buonaparte, or his successours will be able to detach some of his lately created military *lords*, *dukes*, *nobles*, *princes*, or *kings* (for he has manufactured a great number of these articles, all good republicans of course) at the head of half a million of men, to propagate *French* liberty in the United States. Armies, under the direction of French officers, educated in French military schools,* reared in the hot beds of revolution, will soon be disciplined in Canada, Nova Scotia, the West India Islands, and the Spanish possessions in America.† The United States, poisoned by French emissaries

* Most of the famous French generals, and Buonaparte among others, were taught the arts of war in some of the military schools, founded at the commencement of the revolution. Instead of adopting Mr. Jefferson's plan of relying on reason and the friendship of nations, it has been the policy of the revolutionary leaders to make the kingdom a camp and the French a nation of soldiers. Among other institutions, in which the art of war, if not a sole, was a primary object, may be numbered the polytechnic school, the school of mines, the bridge and road school, the biographical school, the navigation school, and the marine school.

† We have been accustomed to think too lightly of the Spanish power in her American colonies. If Burr really had in view an attack upon Spanish America, his scheme was a mad one. The Spanish Americans are more numerous than the inhabitants of the United States; and the late disaster of the British at Buenos Ayres shows that they are capable of being roused into action.

and propagandists, half peopled by foreigners, who have little interest in, and less attachment to the country, must either entitle themselves to some pittance of contemptuous mercy, by the most abject submission, or meet, under every disadvantage, a *world in arms.*

These are not the mere dreams of an ardent or distempered imagination. The old continent has witnessed the subjection of nations once thought invincible. The man, who a few years since ventured to predict the greatness of France and the subjugation of Europe was stigmatized as insane.* But his most dreadful apprehensions have been more than realized. Still America will not awake from her apathy; or if roused at all, shows a disposition by opposing Great Britain, like Sampson, to pull down the pillars of an edifice whose fall must crush her to atoms!

When I reflect that the preceding truths are so obvious, that one would suppose a person, possessed of one grain of common sense, and one spark of political information, could not avoid perceiving them, I cannot but feel apprehensive that there is something Providential in our blindness and infatuation; that the old adage *Quem Deus vult perdere, prius dementat*, applies in a peculiar manner to my native country. Still it is the duty of every individual to contribute, to the amount of his powers, however feeble, to the support of American independence;

* Burke.

and if we must fall, let us, as Dr. Johnson somewhere has expressed it, fall in our ranks, and fight the battle though we may miss the victory.

Those men who are so foolish as to suppose that the yoke of Buonaparte will be easy, and his burthen light, are to be pitied, and their ignorance is to be deplored. Never, before this disastrous period, has there existed a despotism so little under the control of principle; a despotism in which the civil power was so completely subordinate to the military as that of Buonaparte. Instead of meliorating the state of society where his blasting influence extends, his conquests are the harbingers of beggary and wretchedness indescribable, and almost inconceivable.* Death is infinitely preferable to slavery under

* We cannot resist the temptation of publishing in this place an extract from a work lately written in England, which will serve to corroborate the above assertion. It is entitled the Belgian Traveller; or a Tour through Holland, France and Switzerland, during the years 1805—6.

"The instant I entered the Swiss territory, my carriage was surrounded with beggars; their prayers, their lamentations did not cease to harass my ears, and their miserable appearance to torment my sight, until I was in my apartment here (Lausanne.) When I inquired into the cause of such unusual distress, I received the same answer here as in Holland: "*The revolution, and French fraternity have ruined us.*"

"This country never boasted of much commerce, or of many manufactories; but they were sufficient for the wants of the inhabitants, and for the occupation of the poor. The French troops who invaded the Pays de Vaud, those conquerors, who had ravished from Italy spoils of all kinds, to the

Frenchmen of the revolutionary school. As the sluggish Spaniard has been dragged from his peaceful home to meet in arms the sturdy myriads of the

amount of millions, arrived here all in rags. To those who were astonished at their nakedness, they said *the Swiss will clothe us*. After pillaging publick and private banks; after seizing the plate of churches, and the funds and provisions of hospitals and orphan houses, they put into requisition all the cloth, linen, leather and muslin found in publick warehouses or private depots. In one week they thus pillaged and ruined four hundred families and thousands of poor. Since that time no safety has existed to encourage industry or capacity to form any new establishments; and as long as the independence of the Helvetian Republick is not ensured, nor respected by France, nobody will risk his money, labour, and industry, to tempt the rapacity of unprincipled neighbours.

"Here a general opinion is prevailing, that should Buonaparte continue to prosper, he intends to incorporate with France the Pays de Vaud, and the city and canton of Basle, in exchange for the principality of Neufchatel. For this latter he will indemnify the king of Prussia with some fresh spoils of the German empire. When I asked the gentleman, who mentioned this rumour, if the people here would be pleased with a reunion with France? No, sir! They would rather be subjects of the Sultan of Constantinople, or of the Dey of Algiers, than of the Emperour of the French; but you know that the fashion is past of consulting the sovereign people concerning the governments they choose. Such is now the deplorable state of publick spirit, all over Helvetia, that it will perhaps be considered as a favour, if not as an honour, were Buonaparte kind enough to tyrannize over us in person, because who can prevent him from sending us one of his jockies, one of his grooms, or even one of his horses, for our emperour, or for our king."

"Notwithstanding so many crying admonitions, and so many terrible examples of the danger, even for themselves,

north of Europe, so it is very probable that the youth of the United States may be goaded over the arid plains of Asia for the purpose of extending the empire of the French to remotest India.

the revolutionists of the nineteenth century are incorrigible. A gentleman by the name of Du Fresne, who has just come from Neufchatel, assures me, that though the people of that principality, thanks to Prussian neutrality, have remained undisturbed amidst the ruins of Helvetia, and witnessed the infamy of Frenchmen, and the sufferings of the Swiss, they are all ripe for insurrection, and do not wish for any thing better than the Fraternal hugs of French marauders, though their embraces may strangle them.

" The inhabitants of that principality live, however, under a very mild and paternal government, are all industrious and many even wealthy. But they seem to be affected with the general spirit of innovation, now so prevailing upon the continent, and now keeping nations, princes, and subjects, in such continual agitation. The rich want rank, the nobles power, and the mass of the people change ; not considering or recollecting the cruel and deadly effects of innovation and changes in other states.

" Even when you sit down at the ordinary to dine or to sup, you are assailed by beggars, and the sufferings which arise from tales of distress. I remarked one of them, an old man, with a very expressive countenance, who made his tour round the table, accepted of what was given him, but never asked for any thing. When he approached the door to leave the room all the other beggars surrounded him, and he seemed to distribute in silence a part of the whole of what he had collected. This singularity made me inquire who he could be, and what induced him to act thus. I was told that his name was Saunier, and that before the revolution he had been one of the richest manufacturers in the Pays de Vaud. Deluded by the sophistical arguments and hypocritical promises of the leaders

In this situation of the world, Americans, if not infatuated, would cling to Great Britain like shipwrecked mariners to the last plank. Private preju-

of the French revolution, he became an enthusiast in its cause, and was among the most violent revolutionists of this country, when all his wishes were gratified by the arrival of those French friends of liberty, whose fraternity he had so long desired with impatience. His house was open for their reception and he spared no expense to evince the sincerity of his former principles. He was married to a respectable woman, by whom he had three children, a son and two daughters. These latter met immediately with a number of admirers among the French officers, two of whom, within a month's acquaintance, seduced them to an elopement; the astonished and indignant parent began now first to repent of his indiscretion, and perhaps secretly to regret even his zeal in a cause disgraced by such partisans and supporters. But what must have been his feelings when he found that both these officers had wives in France, and that it was merely to gratify a momentary and base passion; that in return for hospitality, they had conferred on a respectable family so much wretchedness. But the measure of his pangs, or *chastisement*, as he now calls it, was not yet full. His son, who was an officer in the corps of the Vaudois insurgents, flew after the seducers of his sisters, overtook them, and was slain in a duel. His death occasioned his eldest sister to die in a miscarriage, and his mother to expire broken hearted. Patriotick contributions and requisitions had in the mean time diminished Saunier's property, and his family misfortunes made him neglect the care of what remained; he had been a bankrupt about a week, when his youngest daughter was brought to him raving mad! This last stroke deprived him almost of his own reason, and he is now looked upon as a kind of innocent idiot. He subsists entirely by charity; but whatever is given him more than will provide for his immediate wants, he partakes with other poor people, under an idea, that without his impolitick and extravagant conduct no revolution would have reduced his countrymen to beggary. The disease of his daughter is by the faculty judged incurable.

dices and ancient animosities would be lost in the great inquiry, what shall we do to escape the destruction which impends over us?

Although we deprecate the consequences of the universal sway of Buonaparte, we would by no means be understood as apologizing for, or attempting to defend the abuses which existed in the old governments of Europe, which this conqueror has overturned. But we would affirm that those abuses are not to be redressed by the hand of an emperour, and a set of newly created nobles, whose pride and tyranny will generally be in proportion to the meanness of their origin. Men who are born slaves are apt to make tyrannical masters. The despotism of the Bourbon dynasty was perfect freedom compared with that of Robespierre and the other mushroom tyrants that rose in the revolutionary whirlwind. It is a fact which was well authenticated by Burke and others, that at the commencement of the revolution, the politicians, the

" Oh! that I could without insult to suffering humanity, carry Saunier and his daughter round all countries, where innovations are preached, revolution approved, revolutionary Frenchmen admired, and the horrours, the ferocity of their fraternity unknown! Oh! that I could restore to these victims of Gallick treachery and infamy their senses, their intellects, that their own feelings might in terms more energetick than my own, delineate French rebels and infidels in their true colours, and call out to nations " Beware! oh! beware to invite the serpents into your bosom; they will not only make your destruction certain, but prolong the torments of your agony, to enjoy at leisure your convulsions." Then I should indeed have merited well of mankind "

Talleyrands and Buonapartes had nothing less in contémplation than to make France the Rome of modern times. The clamour about liberty and equality was excited merely for the purpose of deceiving the nations they proposed to subjugate. Their end was empire, and a false pretence to a zeal for the rights of man, was one of the means adopted to obtain that end. The emissaries of the jacobin sect were despatched into every part of the civilized world as spies and propagandists, to pave the way for the dominion of France. In England they soon became objects of suspicion, and were sent out of the country by order of government. In America they have received the fraternal embrace of our dominant jacobins, who seem to court their chains and invite the lash of the despots of Europe.

Whether the leading men in our administration are leagued with France, and are tainted with those principles which constitute the basis of the jacobin empire, is a question which we shall pass *sub silentio*. Our wish is not to enkindle party animosity, but to save America, if yet possible, from the fate of Holland, Italy, Spain, Switzerland,—indeed that which has overtaken almost all Europe and a part of Asia.

In the situation Great Britain now stands as the defender of nations, the champion of the world, the last hope of that portion of civilized society which has not already passed under the yoke of the jacobin empire, some degree of partiality for that country would

be no unpardonable aberration. Indeed, Americans, instead of exulting in her defeats and misconduct, ought to reflect that those defeats and misconduct may involve *us* in ruin; and if no other tie, that of mutual danger, ought at this momentous crisis to unite them with the mother country.

We will, however, attempt to devest ourselves, as far as possible, of that bias towards Great Britain, to which her peculiar situation would naturally incline us. We will forget for a moment that her cause is now the most sacred of all causes; that of liberty and independence; that she is struggling for existence while France is fighting for empire; and will govern our inquiries into the origin of our late unhappy difference by the principles of equity, and the acknowledged law of nations.

In discussing the subject of our difference with Great Britain we ought to make a distinction between the official acts of either government, and the unauthorized proceedings of individuals. The acts of the latter are not just grounds for war, unless rendered official by the sanction of the government to which they respectively belong.

Thus Vattel. "As it is impossible for the best re-
"gulated state, or the most vigilant and absolute sove-
"reign, to model at his pleasure all the actions of his
"subjects, and to confine them on every occasion to
"the most exact obedience, it would be unjust to im-
"pute to the nation, or to the sovereign all the faults
"of the citizens. We ought not then to say in ge-

" neral, that we have received an injury from a na-
" tion because we have received it from one of its
" members.

" But if a nation, or its leader, approves and rati-
" fies the fact committed by a citizen, it makes the
" act its own: the offence ought then to be attri-
" buted to the nation, as the author of the true injury,
" of which the citizen is perhaps, only the instru-
" ment." Book II. Chap. VI. Sec. 73, 74.

We shall therefore commence our inquiry with Mr. Madison's instructions, so much celebrated by party writers, as set forth in an " extract of a letter from the Secretary to James Munroe Esq. dated January 5, 1804. These having been published in the National Intelligencer, known to be the official paper of the administration, we shall conclude to be authentick and official.

" We consider a neutral flag on the high seas as a
" safeguard to those sailing under it. Great Britain
" on the contrary asserts a right to search for and
" seize her own subjects; and under that cover, as
" cannot but happen are often seized and taken off,
" citizens of the United States, and citizens or sub-
" jects of other neutral countries, navigating the high
" seas under the protection of the neutral flag."

Now since citizen Madison in a part of these his instructions seems to show a laudable inclination to submit to the law of nations, and not like citizen Genet to denounce treatises on that subject as " worm

eaten codes," we will venture occasionally to quote a few passages from writers of acknowledged authority. We will premise, however, what we think will scarcely be disputed, that no neutral nation can protect under its flag the men or property which it cannot protect in its own territory; or in other words we have no greater right over the subjects or property of other nations on board our ships on the high seas, than we have over such subjects or property, which may chance to be within the limits of the United States. If the city of Washington, or even the President's palace, or "back stairs" cannot be an asylum for the subjects of other nations, and particularly deserters, we hope it will not be henceforth pretended that our vessels, in the open seas, the highway of nations, can afford them such protection.

Grotius, after having stated that the subjects of one commonwealth may, under certain regulations remove to another, proceeds as follows.

"But even here must we observe that particular "rule of equity which the Romans, in the dissolution "of private societies, always had regard to; that is, "not to go out of a state if the interest of society "requires he should stay in it. For as Proculus very "well observes, "a regard is commonly had to the "interest of society, and not merely to the particular "interest of any of its members. Thus for instance, "it is no ways for the benefit of society if there be "any great publick debt contracted, for an inhabi- "tant to leave it, unless he be ready to pay down his "proportion towards it: *or if a war be undertaken*

" *upon a confidence of the number of subjects to support* " *it, and especially if a siege be apprehended, nobody* " *ought to quit the service of his country, unless he sub-* " *stitutes another in his room, equally qualified to de-* " *fend the state.* Book ii. chap. v. sec. 24. par. 2.

And Puffendorf: " Since it is the general interest " of every commonwealth to know the number of its " subjects; they that remove ought, in point of duty, " or honour to signify their departure; unless a man " has good reason to suppose, that it will be no pub- " lick concern whether he leaves it with such cere- " mony or not. *But all persons that have engaged* " *themselves in any particular employ for a certain* " *time, ought without question to have the express con-* " *sent of the commonwealth for their remove. But be-* " *sides a remove ought to be at a proper time, and when* " *it is not directly against the interest of the common-* " *wealth to suffer it.* For example (to make use of " the instances of Grotius in the place above quoted) " when the publick debts are great," &c. The author here quotes the passage we have given above from Grotius. Book viii. chap. ii. sec. 2, 3.

Now, if Mr. Madison has read a very rare book entitled Commentaries on the Laws of England, by William Blackstone, Knt. &c or indeed any elementary treatise, in which the principles of law are discussed, and from the prodigious law learning discovered in the ingenious and celebrated state paper under discussion, I almost dare venture to affirm that he has at least looked into the index of something of the sort, (perhaps " Every Man his own Lawyer") he will

find that wherever a right exists, there exists a corresponding duty. And he will find in Vattel (if his researches happen to reach so far) as well as other writers, that if a right exists in one nation, it is wrong for another friendly nation to throw obstacles in the way of its exercise. Vattel we remember has some old fashioned, anti-revolutionary ideas on this subject, such as "every nation is, on occasion to labour for the preservation of others, and for the securing them from destruction and ruin as far as it can, without exposing itself too much,' and that when a nation is attacked by a successful enemy, friendly nations ought to contribute to its assistance; and I hope Mr. Madison will subscribe to the doctrine taught by Washington, our political father, that the English, though enemies in war, are in peace friends. But we will return to his instructions.

"Although," he continues, "Great Britain has not yet adopted in the same latitude with most other nations, the immunities of a neutral flag, she will not deny the general freedom of the high seas, and of neutral vessels navigating them, with such exceptions only, as are annexed to it by the law of nations, in favour of the right she contends for. But in what written or received authority will she find it? In what usage except her own will it be found? She will find in both these a neutral vessel does not protect certain objects, denominated contraband of war, including enemies serving in the war, nor articles going into a blockaded port; nor as she has maintained, and as we have not denied, enemies property of any kind. But no where will she find an exception to this freedom of the seas,

and of neutral flags, which justifies the taking away of *any person*, not an enemy in military service."

Vires acquirit eundo. We were told in a former paragraph that Great Britain claimed a right to take her *subjects* from on board neutral ships, which was denied, as Mr. Madison says, on the best grounds; and now (kindling as he goes) he asserts that she has no right to take away "*any person*," not in military service! That is to say, our neutral flag shall cover and protect felons of all kinds. Burglars, murderers, traitors, have only to come beneath our "canvass wings," or, as Della Crusca would say, our "feathery sails" and get out of cannon shot from shore, to be purified of all their offences; and this because the subjects of his Britannick (not his Corsican) majesty would, in the process of reclaiming them, most probably, be guilty of abuses. If, however, no right is to be allowed either to nations or individuals, which is liable to abuses, alas for poor human nature! One had better be "a dog and bay the moon" than the two-legged, featherless animal, called man, if Mr. Madison's doctrines are correct. The right of travelling the highway is not often disputed, although it may be abused. But shall we say, that, because it is possible that A. might knock down, or otherwise maltreat B. an inoffensive passenger, A, should therefore be debarred the liberty of walking the highway. Or by the "freedom of the seas," so much toasted, is it meant that every malefactor, who has the luck to get on board a ship, and without the reach of the cannon of OUR FORTIFICATIONS, shall be privileged from arrest?

But it should seem that we are under no *obligation*, according to ministerial writers, to deliver up deserters, who have taken refuge within our territory, and that even when found at sea they cannot be reclaimed, because there is no law for that purpose! Nobody, however, we trust, will contend that the *law of nature*, if we may make reason the interpreter, would not require the surrender on demand, or punishment of deserters; and as the law of nations is defined to be "the law of nature applied to nations," it would be surprising if writers had overlooked so important a right, and its corresponding duty. Fortunately, however, for the reputation of Grotius, Barbeyrac, Puffendorf, and others, they have not been guilty of such omission; and as this point has been controverted by some with whom we have the honour generally to agree on political subjects, we shall quote from the two former somewhat at large.

"By the law of nature every particular person, if himself not chargeable with any such crime, has the privilege of inflicting punishment; but since the establishment of states and communities, it is judged reasonable to transfer this right to the respective states or their sovereigns, according to whose discretion all faults, as do properly concern them are to be punished or remitted.

"But the right of punishing offences against human society is not so exclusively theirs but that other publick bodies, or their governours have a right to procure the punishment of them in the same manner as the laws of a particular state allow every one an

action for certain crimes. And much more have they this right with regard to offences, by which they are injured in particular, and which they may punish on that account, in order to maintain their honour and safety, as we have said above. The state, therefore, or governour of the state, where the delinquent is, ought to bring no obstacle to the right which belongs to the other power.

" But since for one state to admit within its territories another foreign power upon the score of exacting punishment is never practised, nor indeed convenient, it seems reasonable, that that state, where the convicted offender* lives or has taken shelter, should, upon application being made to it, either punish the demanded person according to his demerits, or else deliver him up to be treated at the discretion of the injured party. This is that delivering up so common to be met with in history.

" Thus did the Israelites demand of the Benjamites the delivery of those flagitious wretches, mentioned in the twentieth of Judges ; and the Philistines of the Hebrews that Sampson, as a malefactor, should be given them up. Judges xv. So did the Lacedemonians make war upon the Messenians, because they did not deliver up a person who had slain several Lacedemonians ; and at another time for protecting from

* Though the author speaks here of a " *convicted offender*," it is apparent from the examples which he afterwards cites, that the *conviction* of the fugitive was not considered as a necessary preliminary to a legal demand.

punishment those who had deflowered some virgins sent to sacrifice. And Cato was for having Cesar surrendered to the Germans for the unjust war he had brought upon them. The Gauls likewise insisted upon having the Fabii delivered to them, because they had invaded them. Thus did the Romans demand of the Hernicians some who had laid waste their fields; and of the Carthaginians Amilcar, not the famous general, but one who moved the Gauls to rebellion, and afterwards Hannibal; and of Bocchus they required Jugurtha inthese words, according to Sallust: 'That so you may ease us of the ungrateful necessity of prosecuting not only a villain, but you yourself for imprudently protecting him.' And the Romans themselves did deliver up those who outraged the Carthaginian ambassadours, and them likewise who had used the ambassadours of Apollonia in the same manner. The Achœans demanded, that the Lacedemonians should deliver to them those who had laid siege to Lanvicus, adding that their refusal would be by them construed a violation of the treaty. The Athenians issued a proclamation, importing that whoever conspired against Philip, and betook himself to Athens for a sanctuary should be immediately delivered up; and thus did the Bœotians demand of the Hippotenses the murderers of Phocus." Book ii. chap. xxi. sec. 4. par. 1, 2.

And again: "In a clause of the second treaty betwixt the Romans and the Carthaginians, which we find in Polybius, there is a passage very ill pointed, and misunderstood by those who published that historian. If that (what that is by reason of a gap in the preceding

words we cannot tell) be not effected *then let every* man by his own private authority pursue his right, which if he cannot obtain (that is if justice be not done him) *the state* shall be reputed guilty of the crime. Æschines, in his defence to the accusation of misconduct in his embassy, preferred against him by Demosthenes, asserts, that when he was treating with Philip, king of Macedon, concerning a peace between him and Greece, among other things, he told him it was reasonable that not the publick, but those only who committed the crime, should smart for it, and that there was no colour for punishing those states which were willing to bring to justice all suspected persons. And Quintilian, in his 255th declamation, says, that in his judgment, THEY WHO AFFORD SHELTER AND SANCTUARY TO DESERTERS AND REBELS ARE ALMOST AS CRIMINAL AS THE DESERTERS AND REBELS THEMSELVES.

"And among the inconveniences resulting from the disagreement of states, Dion Chrysostom, in his oration to the Nicomedians, reckons this for one, that they who have been injurious to one state, may fly to, and find refuge in another." Book ii. chap xxi. sec. 4.

Again, in sec. 5. of the same chapter: "The so much revered rights of suppliants, or refugees, and the many precedents of asylums, affect not our last conclusion; for they are intended for the benefit of them who suffer undeservedly, and not for such whose malicious practices have been injurious to any particular men, or to human society in general. Gylippus, the

Lacedemonian, in Diodorus Siculus, speaking of the privilege of refugees has these words: It was the design of the first institutors of these rights that the unfortunate should find compassion, but that such who, by their villanies, made punishment their due, should not expect an exemption from it. And a little afterwards: But let not those, who by fraud and avarice have made themselves miserable, complain of fortune, or dare to assume the title of suppliants, because that is due only to those who are free from guilt, though not from infelicity; but the flagitious lives of those have devested them of any claim to compassion and protection."

Professor Barbeyrac, in commenting on the above passages, remarks: "Lucullus demanded Mithridates of Tigranes, and upon his not giving him up, made war against him. Appian, in his life of Mithridates and Plutarch in his Lucullus. The Romans required of the Allobroges to deliver up the Salagæ. Appian, Excerpt. legat. xi. See Priscus Exc. legat. xxi. of a certain bishop whom the Romans were to deliver up to the Scythians. A duke of Benevento was delivered up by a Gascoigne prince to Ferdinand, king of Castile. Mariana, xx. 1. Grotius.

Puffendorf, in book viii. chap. 6 par. 12. in stating the causes which would justify a nation in going to war, refers the reader to the passages above quoted, and thus adds the weight of his authority to that of Grotius.

Many more authorities, to the same points, might be adduced; especially, as respects allegiance, from

Blackstone's Commentaries, &c. But we forbear, as those who will not yield to the weight of what we have already presented, we shall conclude to be too strongly prejudiced or prepossessed to listen to reason, or to respect authority. We believe that those respectable gentlemen, federalists as well as others, who maintain that the English have no right to demand, and that it is not our duty to deliver deserters, are not conscious of meriting the anathemas of Quintilian: "That they who afford shelter and sanctuary to deserters and rebels are almost as bad as the deserters and rebels themselves." And were these ordinary times, we should not, perhaps, have run the risk of making personal enemies of so many respectable characters as those, who, as well in Congress as without, are the advocates of the *new* principle, that there is no law to compel the delivery of deserters. But if the enormity of a crime is to be estimated by the consequences which result from its perpetration, we must say that those who, in this crisis, would encourage deserters from the British fleet and make our vessels their asylums, ought to tremble at the thoughts of *the guilt* which they are incurring. The British navy is now the last hope of humanity, and we, by receiving and protecting deserters from it are dismantling and destroying *our own bulwark*. We are cutting our own throats with our own hands, and are causing the nation to commit suicide.

For those who stigmatize the law of nations as a bundle of "worm eaten codes" we have at hand a recent French authority, which, though to be sure not very respectable, is, to use a phrase not re-

markable for its politeness " good enough for them ;" more especially, as it is most abundantly conformable to *Reason*, the ci-devant goddess of the modern Gaul. Admiral Willaumez, in a letter to general Turreau, the French ambassadour, at Washington, dated 26th October 1806, thus expresses himself :

" I have just apprehended four seamen, deserters from the Valeureuse frigate, which I found on board an American brig, where they had engaged at seventeen dollars per month. Now, sir, if you can succeed in making the American government pay down a compensation for this misconduct, in seducing thus our seamen, you will punish it by making it smart in that part in which it feels most, viz. its avarice of money."

Since writing the above, we have seen an ably written publication in the Boston Repertory, which shows how much the practice of modern nations has been conformable to the acknowledged law of nations.

We shall merely give an abridgment of the facts.

Commodore Preble, in the United States ship Constitution, was lying in Gibraltar Bay, when he was informed by a lieutenant, whom he had previously sent into that port with a prize, that five of his men had deserted, while on shore, had been protected by the guard, and had finally entered on board the Medusa frigate, captain Gore, claiming protection *as British subjects*. Commodore Preble

sent an officer on board the Medusa, to demand these men; but captain Gore not only refused to deliver them, but treated the officer with great insolence, and permitted one of the sailors to insult the officer on board his ship. He then carried his insolence so far as to demand the clothes and wages of these seamen of commodore Preble—The latter then applied to the commodore of the port, who thought (as our little men think) that he had no right to interfere. Lord Nelson was then applied to by commodore Preble, who wrote a letter in the most "gentleman-like and officer-like terms, expressing his regret for the affair, and assuring commodore Preble that he would issue orders to captain Gore to deliver those men *(though some of them were British subjects)* to the first ship of war of the United States which he should meet, and if he should not meet any, to deliver them to the American consul in the first port he should enter." Whether the men were ever restored is not known; but the case may be relied on, and it proves that commodore Preble thought that he had a right to demand deserters from a foreign country, even after they had entered into the publick service of the country of which they were natives. And that though inferiour officers of the British navy are sometimes insolent, yet the highest officers in the British service, *after discussion*, admitted commodore Preble's claim, although against *British subjects*.

In the same paper is likewise stated a French case, of a man born in Dunkirk, France, and surrendered, on application by captain Campbell, with

a certificate of his having been surrendered in consequence of orders from the French admiral Mons. Rosily. This case, as the able editor of the Repertory, or his correspondent, remarks, proves,

" First; That France does not admit the right of *her citizens* to expatriate themselves in time of war. Secondly; That she does not carry her courtesy and respect for our flag so far as Great Britain—that she claims the right to demand her seamen (though not deserters) from even our *publick* ships. Great Britain, on the contrary, restores them if they desert, though Englishmen, and she *only* claims the right to take out *her* subjects from our private merchant ships.

" Two British sailors likewise, who had entered, and were serving on board the United States' ship Constitution, captain Rogers, deserted from said ship, while lying at Malta, a British garrison, and entered on board the Phebe, British frigate, and claimed protection as *British* subjects. Captain Rogers demanded these men, who were delivered, though *British* subjects, and were punished by order of captain Rogers. Here, as well observed by the writer, the courtesy of the British officers carried them further than the extent of the obligation imposed by the law of nations; as the original contract of the seamen, on entering the American ship, was unlawful, they having no right while their country was at war, to enter into the service of a foreign power.

In December 1802, likewise, a petty officer deserted from the Adams frigate, and was restored by general Barnet, though an Englishman.

In the above cases, it would seem that the deserters were considered criminal in having violated the contract of enlistment, and were accordingly surrendered.

To this case is added one in this city attested to by Monsieur Felix de Beaujor, commissary general of commercial relations from his majesty, the emperour of the Fr ench, and king of Italy, member of the legion of honour, &c. &c. by which it appears, that in November 1806, Hypolite Dumas reported himself to be an ensign in the navy of his said imperial and royal majesty, was enrolled as such on board the Alexander, a French ship, was accidentally in the United States, and requested to be sent back to France; that he was accordingly sent on board a transport, from which he deserted, and that he caused him to be *arrested in Philadelphia* by a warrant from Abraham Shoemaker, esq. The deponent likewise states, that "*Deserters from vessels of the United States have frequently, to his knowledge, since the year* 1800, *as well as before, on application of the American consul, been apprehended and delivered up to them by the constituted authorities of France*, that he has never known such an application to be refused, because he knows that the French government consider it as a duty imposed upon them by the laws of nations, to apprehend and deliver

up those who desert in their ports, from the vessels of a friendly power; and this deponent says, that he has been consul of France, as well before, as during and since the revolution, in different countries of Europe, and particularly during the war in Sweden, which, during the whole of said war, was either neutral or hostile to France; that he was there within the period of her neutrality, and there also deserters from French vessels were, on application, always apprehended and delivered up to him, as a duty imposed by the laws of nations, and not by virtue of any convention, capitulation, or treaty."

To show that even armed national vessels have not been thought competent to the protection of deserters, we will adduce the following statement of facts from the writer above quoted, from the Boston Repertory:

"While one of our smallest vessels of war was lying at Palermo, in the year 1804, a seaman deserted from her, and entered on board a privateer, under the commission of the emperour of France. *Some time after*, the Enterprise, Capt. Decatur, came into Syracuse, and found the same privateer lying there.—That *gallant officer* instantly sent and *demanded* the seaman. The French Captain refused to give him up.—Decatur, with his characteristick spirit, replied, that unless he was delivered up, he would *retake him* by force. The French Captain answered that he would repel *force* by *force*. Decatur, not dismayed by this threat, nor deterred from the prosecution of his purpose, caused his boat to be duly manned, sent on

board and *seized the deserter*. It must be remembered that the French Captain, like Commodore Barron, did not make the *resistance* he had threatened. It ought to be known too, that Syracuse, where this fact took place, is in the territory of a power then in amity both with France and the United States.

" The above case is a *most strong* one against ourselves, on this question of the Chesapeake; it goes fully to establish the following points against us :

" First ; That our officers have always believed, that they had a right to demand their *deserters*, who desert in a foreign jurisdiction, even after they have entered into the *commissioned vessels* of other nations.

" Secondly; That they *considered* that the ships of war of other nations are bound to deliver up such deserters, and that to refuse it is a wrong.

" Thirdly ; That they entertained the opinion, that if restoration be refused, an avowed insult and injury is committed, which would JUSTIFY AN APPEAL TO ARMS. This case is broader than that of the Chesapeake ; because *here* there had been no appeal to the government of France, as there had been to our government ; this act was done in a neutral country, and not on the high seas, and we were not in so *great need of men* at *that* moment as Admiral Berkley's squadron was, who was watching a French fleet.— But Captain Decatur was *not the only officer* who entertained those ideas at that time. Commodore Preble came into Syracuse, in the Constitution, that

night; his officers went on shore; the Governour of Syracuse detained them, and sent word to Preble that he had *so done*, and that the Constitution should not quit the harbour till the deserter, forcibly retaken, should be restored to the French officers.

" That noble-spirited, and ever to be lamented naval commander, who infused such an inestimable spirit into our navy, declared, instantly, that he approved of the conduct of Captain Decatur, and sent word to the Governor of Syracuse, that unless his officers should be set at liberty in five minutes, he would batter the castle about his ears. This threat produced its utmost object; submission, and the delivery of the deserters. If it be said that this proves *too much*—that certainly the officers ought to have respected the territory of Naples, if not the flag of the offending nation, I answer, that AT LEAST it ought to make us moderate in our censures of the military men of other nations.

It may, perhaps, be asked if the law of nations gives the right in question, why should it be stipulated for in most modern treaties?

To this I reply, that as statute laws are often merely *explanatory* or *declaratory* of common law, so treaties may be merely *declaratory* of the preexisting *law of nations*. Indeed, treaties which are not made in conformity to such law cannot be valid. Thus Vattel:

" This law is immutable, and the obligations, which arise from it necessary and indispensable: nations can

neither make any changes in it by their conventions, dispense with it themselves, nor reciprocally with respect to each other." Preliminary Discourse on the Principles of the Law of Nations.

From the law above quoted, from the usages both of ancient and modern nations, as well as from the principle of reason, it appears that the following, among other points, are settled.

First; A kingdom, or commonwealth, has a right to command the services of its subjects, in times of publick danger, and prohibit them from migrating or enlisting in the service of any other kingdom, or commonwealth, except under certain regulations, as stated above.

Secondly; If a citizen or subject of one nation, with the express or implied assent of the power to whom such citizen or subject owes allegiance, enters into the service of another nation and deserts, he ought to be delivered up, even if he takes refuge with the nation of which he is a native citizen.

Thirdly; The nation with whom such deserter takes refuge is bound, by the law of nations, to deliver up the fugitive on demand, and a refusal so to do, is a just ground for war.

Fourthly; It follows irresistibly from the premises, that if the men taken on board the Chesapeake were deserters, no matter whether British subjects or not,

but men who had voluntarily entered on board British ships, with the express or tacit consent of our government, the British had a right to their services, till they had fulfilled their contract.

Fifthly; A nation impeding or hindering another nation in the exercise of its right is the aggressor, and if a war is the consequence, it is an unjust war, on the part of the nation so offending.

It is nothing to the purpose to say with some writers, in the New-York Evening Post, that Great Britain has long been in the practice of enlisting into her navy the citizens and subjects of other nations; and, "that every foreign seaman, who, during a war, shall serve two years in any man of war is naturalized *ipso facto*."* A person may employ a minor and take into custody an estray. But the parent in the one case and the owner in the other, possess the paramount right to the services of the one and the property of the other. We know that many nations in Europe and elsewhere, permit their citizens to enlist, as mercenaries, in foreign armies. The unfortunate and enslaved Swiss, for example. But shall it be said that because the French have had their Swiss guards and allowed them some privileges above common soldiers, the emperour has no right to prohibit the desertion of French sailors or soldiers; or in case of desertion cannot reclaim them from a neutral nation? We believe that admiral Willaumez would hardly listen patiently to such logick.

* Blackstone, vol. I. p. 420.

Every lawyer knows that *natural allegiance* is paramount to *local allegiance*, and that in case of clashing claims, the former is to be preferred. And though Great Britain may employ American, Dutch or Danish sailors, and allow them some peculiar privileges, yet we believe that there has been no instance, when proper application has been made, to proper authority, by those who had a superiour right to their services, in which they have not been surrendered. But even allowing that in certain instances, subordinate officers in the British navy have been guilty of some infractions of the law of nations in this particular; it will not, I hope, be contended that this example should be the rule of our conduct, especially if the infractions of which we complain were never sanctioned by the British government.

But it is said that armed ships, national vessels, enjoy peculiar privileges. That though merchant vessels are searched, yet they are exempted. This, however, is a question not embraced by the case of the Chesapeake, and therefore, as the lawyers say *coram non judice*. But before we come to examine the facts in that case, we will take another glance, en passant, at Mr. Madison's instructions which are said to have tied the hands of Mr. Munroe, and thus defeated the object of his embassy.

"If treaties (says Mr. Madison) British as well as others, are to be consulted on this subject (viz. the taking of deserters from on board neutral vessels) it will appear that no countenance to the practice will be shown them."

Certainly, and there is nothing in modern treaties which gauranties to the captain of a man of war the right of walking his own quarter-deck ; and we do not at present recollect any article in which there may be found any thing which gives the good people of Virginia a right to make Indian hoe-cakes on their own plantations.

" Whilst they admit a contraband of war, by enumerating its articles, and the effect of a royal blockade by defining it, *in no instance do they affirm or imply a right in any sovereign to inforce his claims to the allegiance of his subjects on the high seas.*"

They affirm, however, and, as Mr. Madison has told us above, Americans do not deny, that the belligerent has a right to search for contraband articles, including men in the service of the enemy. And I hope no one will contend that it is not a point of as much importance to the belligerent to recover his *own men*, as to capture those of the enemy ? And as it appears from the authorities we have quoted, as well as from the practice of modern nations, that belligerents have a right to demand their deserters, even within the territory of the neutral, and that it is the duty of the neutral in such case, to surrender them ; I hope no one will contend that the sovereignty of the latter increases on leaving his territory, or that he has greater claims of dominion on the high seas than on his own threshold.

But it is time to again wait on Mr. Madison and to listen to his " instructions."

"If the law of allegiance, which is a *municipal* law, be in force at all on the high seas, on board foreign vessels, it must be so at all times there, as it is within its acknowledged sphere. If the reason alleged for it be good in time of war, namely, that the sovereign has then a right to the service of all his subjects, it must be good at all times, because at all times he has the same right to their service. War is not the only occasion for which he may want their services, nor is external danger the only danger against which their services may be required for his security. Again; if the authority of a *municipal* law can operate on persons in foreign vessels on the high seas, because within the dominion of their sovereign, they would be subject to that law, and are violating that law, by being in that situation, how reject the inference that the authority of a *municipal* law may be equally inforced on board foreign vessels on the high seas, against articles of *property*, exported in violation of such a law, or belonging to the country from which it was exported."

In the first place, it is a *new discovery*, that the law of allegiance is exclusively *municipal law;* for, as Blackstone says, "the civil law very justly observes, that *quod naturalis ratio, inter homines constituit, vocatur* JUS GENTIUM; and if it be consonant with *reason* that a man owes *no allegiance* to his native or adopted country, then the law of allegiance is a *municipal law;* or as the derivation of the word would

* What men would call the dictates of reason forms the law of nations.

seem to point out *city or corporation law*. But all writers that we have seen on the law of nations who speak of allegiance, or what is meant by allegiance, under the heads of sovereign, commonwealth, citizen and subject, and if it be true that the law of allegiance is merely and exclusively *municipal law*, they have transcended their bounds, and might as well have given us, under the heads of their different chapters, essays, and chymical analyses upon stones, supposed to have fallen from the moon.

" And thus (continues Mr. M.) every commercial regulation, in time of peace too, as well as of war, would be made obligatory on foreigners, and their vessels, not only whilst within the dominion of the sovereign, but in every sea, and at any distance, where an armed vessel might meet with them."

Burke, in his treatise on " The Sublime and Beautiful," informs us that *obscurity* is one source of the *sublime*. If so Mr. M. may put in a plausible claim for sublimity as a writer. It must, however, be understood, that there are two causes of *obscurity* in writing. The one is the *depth*, and the other is the *confusion* of a writer's ideas. In the one case the man thinks *profoundly*, and in the other case he *does not think at all*. No mortal can comprehend what we have last quoted from Mr. M. And is it because, like Newton's Principia, it is beyond the intellectual ken of common philosophers; or is it because the writer, not having a clear conception of his subject bewilders himself, and puzzles his reader? These

are points which we shall leave to future commentators on Mr. M's. masterly state papers.

The subject is the right of belligerents to take from on board neutral ships on the high seas, not only contraband goods, but *contraband men:* and why Mr. M. should be talking about "commercial regulations," "foreigners," &c. is to me quite incomprehensible. He might as well have given us the story of Robinson Crusoe, or Socrates in a basket, from the comedy of the clouds.

Suppose A. captain of a revenue cutter (a native of this country if you please) and commander of an armed or national vessel, should overtake on the high seas B. an Englishman, or other "foreigner," "in time of peace" who had violated the "commercial regulations" of the United States, by having smuggled goods on board, would A. hesitate to seize the property? Should I meet a man, on an uninhabited island with my stolen watch in his pocket, without the jurisdiction of the United States and every other nation, should I hesitate to reclaim it? But laws for preventing smuggling in the one case and larceny in the other are *municipal* laws.

Again says Mr. M. "If the subjects of one sovereign may be taken by force from the vessels of another, the right of taking them, when found, implies the right of searching for them." Aye, and "there needs no ghost come to tell us that." The belligerent, having a right which Mr. M. allows to search neutral ships for contraband goods, and enemies pro-

perty, and thus obtaining a *lawful entrance* on board the neutral, he is obliged according to Mr. M. to shut his eyes, lest he should see his own men, who have deserted! Should he happen to find stolen articles, if his own property, he has no right, forsooth, to take them, because he had no right to search for them! Most invincible logick to be sure! I will put a simple case. A. obtains a warrant to search the barn or the domicile of B. for a stolen horse or a silver tankard. By virtue of this warrant he obtains a legal entry. If instead of the tankard or the horse he finds his watch or a cow could he not take possession of them? If not, judge Blackstone has misled us in his articles under the heads "reception and reprisal."

We are next told by Mr. M. that this reception of deserters is unlawful, because "it deprives persons of the dearest *rights of a regular trial*, to which the most inconsiderable article of property captured on the high seas is entitled. To this we have before answered, and will now answer again, as *line upon line* seems to be necessary in these instances. A man has a better chance to obtain a regular trial than any article of property. The neutral ought to require proof. If the belligerent has none, and takes a man by force he is wrong; and if no remedy can be obtained on a proper application to the government to which the belligerent belongs, it is just ground of complaint, and would justify even a war. But, as we have before observed, the possible abuse of a right furnishes no argument against its use.

Mr. M. gives us much commonplace declamation respecting the injury to which the person taken from on board the neutral is exposed, altogether in the style of a modern philosopher, who would devote the whole island of Great Britain and all its inhabitants to destruction, with the greatest sang froid; and then write a melting elegy on a dead cricket, or "sit chief mourner at a may-bug's grave." We know that the right of a regular trial cannot be had at the time of arrest in civil cases. If the arrest is tortious, there is generally a remedy by action.

Mr. M. thus deals in the pathetick.

"Can it be reasonable, then, or just, that a belligerent commander, who is thus restricted, and thus responsible, in the case of mere property of trivial amount, should be permitted, without referring to any tribunal whatever, to examine the crew of a neutral vessel, to decide the important question of their respective allegiances, and to carry that decision into instant execution, by forcing any individual he may choose into a service abhorrent to his feelings, cutting him off from his most tender connexions, exposing his mind and his person to the most humiliating displeasure, and his life to the greatest danger? Reason, justice, humanity, unite in protesting against so extravagant a proceeding."

All this is very dreadful to be sure. But let us suppose another case, in which we might, perhaps, find a parallel to the miseries of these so much injured and

unfortunate men. Let us suppose that our commercial towns are attacked by Great Britain, and our militia *landsmen* are *draughted* into gun-boats to defend them. If the British impress their own seamen, *we* have no right to interfere or complain.

" The evil (continues Mr. M.) takes a deeper dye when viewed in its practice as well as principles.—Were it allowable that British subjects should be taken out of American vessels on the high seas, it might at least be required that the proof of the allegiance should be on the British side.

This we shall answer as we have before answered it.* If this reasoning be correct, certificates of citizenship, or protections, would in all cases be unnecessary, because the burthen of proof being thrown on the party claiming the allegiance, the other party would have no need of evidence. The party claiming a privilege or immunity must produce his title. Besides the facility of procuring proof of citizenship, or a protection, makes it the duty of the person claiming the immunity, to furnish himself with the necessary evidence.

Having now adduced our authorities, and cleared away some of the rubbish, which impeded our passage, we pass on cheerily, chaunting with Cowper.

" As one who long in thickets and in brakes
Entangled, winds now this way, and now that,
His devious course uncertain, seeking home;
Or, having long in miry ways been foil'd

* In the New York Weekly Inspector.

And sore discomfited, from slough to slough
Plunging, and half despairing of escape
If chance at length he find a green sward smooth
And faithful to the foot, his spirits rise,
He chirrups brisk his ear erecting steed,
And winds his way with pleasure and with ease
So I, designing other themes——
Have rambled wide.

I shall now proceed to discuss the subject of the attack on the Chesapeake, and the circumstances, which led to it. In the summer of 1806, a French squadron of line of battle ships and frigates, having met with a gale upon our coasts, a part of them took refuge in the Chesapeake, to shelter themselves from their enemies. A British squadron detached to watch the motions of the French, took their station in Hampton Roads.

On the 7th day of March last, five British seamen, belonging to the Halifax sloop of war, lord Townshend commander, while employed in weighing the anchor, rose upon their officer, attempted to *murder* him, and made off with the boat to the American shore. Their names were Richard Hubert, sail maker, born in Liverpool; Henry Saunders, yeoman of the sheets, born in Greenock; Jenkin Ratford, born in London; George North, captain of the main-top, born in Kinsale; and William Hill, born in Philadelphia, who entered in a British island *voluntarily*, viz. Antigua.

The facts of their birth and citizenship were taken from the ship's register; and were sworn to

have been their *own* declarations, at the time of their entry on board the ship.

The day after their landing they were enlisted on board the Chesapeake. This *might* have been ignorantly done, but they had not American protections. The day after enlistment lord Townshend demanded these men of lieutenant Sinclair, the recruiting officer of the Chesapeake. The government of the United States had, as asserted by captain Barron ordered the recruiting officers, *not* to *enlist British deserters*. The deserters were not at *this time*, on board the ship, but at the rendezvous. Lieutenant Sinclair made an evasive answer to this application, and did not deliver nor discharge the men. An application was made to captain Decatur, by captain Townshend, who referred him back to Sinclair. The British consul applied to the mayor of Norfolk, but without effect; and the British minister applied to the American government, who replied that they had on a former occasion stated their reasons for not complying with their request, and that the men were Americans.

These men were among the crew of the Chesapeake at the time of these four solemn demands, and continued on board till the ship sailed down the river, when four of them deserted. The fifth remained on board till after the last demand by captain Humphries, and to which demand Captain Barron replied that "*he knew of no such men* as Captain Humphreys described." After the action, Ratford was found hid in the coal hole of the Chesapeake, and has since been tried, found guilty of mutiny, and executed.—

He confessed himself to be a native of London; that he had entered *voluntarily* into the service of his Britannick Majesty, and was persuaded to enter on board the Chesapeake, to protect himself from the search of his officers; and on entering *he was asked if he had not a second name, and that he thereupon entered by the name of Wilson.* As soon as these repeated demands and refusals were known, admiral Berkeley, finding, as he alleges, that the seamen of the British fleet were deserting every day, issued an order, directing the officers of his Majesty's ships, under his command to require permission of *the Captain of the Chesapeake* to search that ship, on the high seas, for the deserters referred to in his order, AT THE SAME TIME OFFERING A LIKE AND RECIPROCAL PERMISSION TO AMERICAN OFFICERS. Captain Humphreys was intrusted with the execution of this order, and the manner in which he executed it is too well known to need repetition.

It appears that a formal demand was made by Captain Humphreys for British seamen; that this demand was polite and respectful; and that Captain Barron did not state the case *truly* to Captain Humphrys; for although three of the men demandedhad escaped, one was still on board.

What is said respecting the impropriety of suffering a British officer to muster the crew, has no meaning. Those on board must have known who the men demanded were; and if Captain Barron had orders not to enlist deserters, he ought, when they were en-

listed, to deliver them up. Had he sent on board Ratford, the deserter, all would have been well.

The attack was not cowardly, because the Leopard carried a smaller number of men than the Chesapeake; The Chesapeake was a large 44; and it appears by the proceedings of the court martial, which sat on Barron, that she was fully prepared, and the British officers, it is said, avowed to ours their intention of using force.

When the British searched the ship, they found Jenkin Ratford, one of the seamen demanded, John Strachan, Daniel Martin, and William Ware, *three other* men, admitted by our government to have been deserters from the Melampus, a British frigate, who were not contained in the order of Admiral Berkeley. They also found twelve other British seamen on board. but they not being deserters, were suffered to remain. There were then on board the Chesapeake, while she was at Washington, twenty British seamen, twelve who were not deserters; five who deserted from the Halifax, and three from the Melampus.

The British officers took Ratford and three other *deserters*, whom they were not ordered to take.

The president in his proclamation states that it had been previously ascertained the *seamen demanded* were native citizens of the United States; but he was misinformed. *All the seamen demanded were native British seamen.* John Strachan, of Maryland, William

Ware, of Maryland, Daniel Martin, of Bonaire, were deserters, from the Melampus. These last, however, were not the cause of the attack on the Chesapeake. They told capt. Barron a falsehood in stating that they had been impressed on board the Melampus for capt. Crafts informs us that he charged them with theft in England; that they absconded and entered on board the Melampus; and that he di not even demand them either of the captain of the Melampus or of the British government. Now, as these men had entered voluntarily, and had received the bounty and wages, they owed what is termed by writers on law, a local allegiance to their adopted country, and became bound, besides, by their contract made at the time of entering on board the Melampus. Their entering into his Britannick majesty's service was lawful, it was not violating either our laws or the rules laid down by writers on the law of nations relative to the cases in which a man may expatriate himself. Captain Crafts had a superiour claim to them; but as he never demanded them he must be supposed to acquiesce, and gave, though not an express, a tacit consent to their enlistment. But as these were not the men *demanded* they were not the cause of the attack on the Chesapeake, and of consequence, their case has no connexion with the grounds of the existing dispute between America and Great Britain. Besides, as they had violated the laws of Great Britain they ought to be delivered up, even though Americans, coming within the rules laid down by Grotius and other writers, which we have quoted respecting the delivering up of fugitive criminals. We have, however, merely mentioned this case because some have

expressed doubts on the subject; for it furnishes not the least cause of complaint against the British officers, or their government.

The foregoing is a concise statement of the facts so far as I can learn them. A part, I acknowledge is taken from the affidavits of the commander and officers of the Halifax, printed in the trial of Jenkin Ratford, one of the mutineers. See likewise "Peace without Dishonour and War without Hope, by a Yankee Farmer.*" Our government maintain a degree of secrecy which I do not say may not be laudable as well as politick. There are, however, in the statements of the British, marks of candour which ought to entitle them to some credit. They allow that Strachan, Ware, and Hill, were native Americans, but deserters; and if what they tell us be but *in part true*, we ought not to go to war with Great Britain. Even allowing that they have committed an outrage as flagrant as is by some represented, it is possible that there might be some atonement. But whether they are right or wrong, France will take advantage of our hostility with England, and in the result our contest will end in something like what is fabled of the affray between the frog and mouse, while *the vulture* hovered near in order to devour both the combatants.

* One of the faults of my good friends, the federalists, is, that they kindle a light and then put it under a bushel. The "Yankee Farmer" was with difficulty to be found in Philadelphia. If they would be good enough to take a little more pains to circulate their productions they would deserve still better of the American people.

Some may say, that this pamphlet was written under British impressions, and that the writer is under British influence; and therefore not a *true American*. To this I would not reply that I despise alike the insinuation and the insinuators, and that the *true American* would, if possible, save his country from a war which would be unjust, impolitick, and ruinous; but that if we should prevail against Great Britain, we are *ruined:* if we should not prevail we are *undone*.

This may appear to some not only strong, but improper language. To such I would reply, that I believe that a man has a right to take his friend *by the hair of his head* if he is drowning. Such treatment would, however, be wrong, and very impolite in common cases. If my friend is on the verge of a precipice, I believe (though I have not consulted Mr. Madison about the *law of nations* on this point) that I may lay a rough hand upon him to prevent him from his proposed somerset leap.

Some people say, why do the federalists always cry wolf! wolf! when there is no danger. To this I reply, that in national affairs, you do not always see the wolf till he has you by the throat. The city of Washington and our good congress might be whelmed in an earthquake and still the sun would absolutely rise the next day, and if we were not informed of this terrible event, pins or turrapins might be bought in the market at the usual price.

To those who find that I have been tripping or stumbling in point of phraseology in this pamphlet,

I have a word or two from Pope which happen, to come in my way, and especially for those who are *merely* word mongers:

> " Neglect the rules each verbal critick lays,
> " For not to know some trifles is a praise."

And again:

> " Words are like leaves, and where they most abound,
> " The fruit of sense is rarely to be found."

Verbal criticisms are well in their place; but when one has any considerable weight of *meaning* he may be allowed to sometimes halt a little in his phraseology. Florid sentences are merely, as it were, ideas set to musick, but the ideas are not rendered the more valuable in consequence of their splendid dress. They are to be appraised merely as conveying correct and useful ideas *of things*.

But to return from this digression. If, as appears from the best information we have been able to obtain, *our government*, as well as the officers acting under their authority, violated flagrantly the law of nations, they have furnished just and sufficient ground for a *declaration of a war*, on the part of Great Britain. But it is said that the act of captain Humphreys was cowardly and piratical. With respect to its being cowardly, I would observe that his force was less than that of the Chesapeake, and that he acted in obedience to orders from his superiour officers. He would have been shot had he refused to obey them. With respect to the attack itself we

cannot see why it may not be justified as an act of reprisal, which may be defined as a species of hostility *read hoc*. An action undertaken to redress a particular injury.

It is true that in ordinary cases the consent of the sovereign is requisite in order to authorize reprisals. But here the sovereign was at three thousand miles distance, and admiral Berkeley might lose half his seamen, before he could get an order from home. Besides, if this proceeding was *unjust*, merely because *unauthorized*, those who were guilty are responsible to the British government, and not to ours. The *primitive act* of injustice was *the refusal to deliver up the deserters*.

The right to search national ships is not involved in this case. Here was not a suspicion merely, but what amounted to a *moral certainty* of deserters being on board *that particular ship*. It may be very rude as well as unlawful for me to put my hands in the pocket of any one who has the appearance of a gentleman. But if I have a moral certainty that he has my *purse of guineas* furtively taken, I should not hesitate to attempt to search him, by virtue of the right of the strongest; especially if I should happen to be without the jurisdiction of the United States, and could not with facility obtain a warrant.

If what I have heretofore advanced be correct, the contemplated war with Great Britain, to be commenced on account of the attack on the Chesapeake, would be *unjust;* and the party *commencing*

an unjust war (says Vattel in substance) is chargeable with all the evils, all the horrours of war; all the effusion of blood; the desolation of families; the rapine, the violences, the ravages, the burnings, ARE HIS WORKS, AND CRIMES. He is guilty of drawing the people into acts of injustice, exposing their lives without necessity; without reason. Towards that part of the people whom the war ruins or who are great sufferers by it, of their losing their lives, their fortune or their health, he is guilty towards all mankind, of disturbing their quiet, and setting a pernicious example. Shocking catalogue of miseries and crimes! dreadful account to be given to the King of kings, to the common Father of men!

In our case it may be observed that the party commencing this war will be guilty of throwing America into the arms of France, and bringing her under the iron yoke of the despot who scourges Europe.

Had Great Britain been the *aggressor*, what *hope* have we from this war? Hear what our beloved and immortal Washington said some years since, when the navy of Great Britain was much less powerful than it now is, and when it was not, as it now is, the pivot on which turns the fate of that portion of civilized society, throughout the world, which has escaped the curse of Jacobin domination. "Seeing she has the command of the sea (and appearances indicate strongly that she will maintain that command) our commerce might, in one year, be annihilated and thousands of our seamen be shut up and dying in jails and prison ships. In addition to her fleets

now in commission, privateers would swarm, as soon as objects so *alluring and so assailable* as American commerce should present.

"If we look to the two last years of our revolutionary war, a judgment may be formed on this point. A striking defect in her naval arrangements in preceding years left our ports open for the entry of commerce, for the equipment of privateers, and the introduction of frigates. A different arrangement in the latter part of the war totally changed the scene. The small privateers were hauled up as unable to cope with armed merchantmen, and the larger privateers were taken. Our shipping fell at the same time a sacrifice to the vigilant operations of the British navy.

"At the present moment (1795) her naval power is extended beyond all former examples; while that of her *enemies* is at least *not increased*

"Secondly, our landed as well as commercial interests would suffer beyond all calculation. Agriculture, above the supply of our own wants, would be suspended, and *its produce perish on our hands*. The value of our lands and every species of domestick property would sink.

"Thirdly, the sources of revenue failing, publick credit would be destroyed, and multitudes of our citizens involved in ruin. THE PEOPLE AT LARGE would be plunged from the summit of prosperity into an abyss of ruin, too sudden and too severe to be

patiently born. To increase their calamities *direct taxes* must be levied to support the war; and it would be happy for us if we could contemplate only a foreign war, in which *all might unite*.

These are the words of our beloved and immortal Washington. Will you, or will you not listen to them?

As respects our beloved country, the truth is, that we may be more deceived, and the deception be more fatal, in *over-rating* than *under-rating* her consequence. Miss Columbia, or Madam Columbia (now being a *native American*, I may say what I please about my *own country*) is a little like a tall hoyden, of fourteen, or thereabouts, who having been well fed in early life has grown to six feet bating an inch three lines. And she has not quite enough of carbonate and phosphate of lime (as I believe our philosophers would say) in her bones, and other things, in proportion, to give a proper contexture of form, and therefore is in vast danger of falling into a consumption, or premature decay. But badinage apart.

Those who reflect on the extremities of the sufferings of Washington's troops—that they could be tracked over frozen grounds *by the blood of their feet*, and the perils, which, it would seem no other man could have surmounted, *will think* at least before they plunge the country, *in an unprepared state*, into a war, absolutely "without hope," in which victory or defeat would be alike ruinous.

The writer hopes he may not make personal enemies by this pamphlet; not because he would not, like *Curtius* of yore, leap into a gulph to save his country; and march to a cannon's mouth in the *service of his country;* and where honour, *correctly defined*, although he is no duelist, would call him to the field, expose himself to the shot of his adversary. Although no personal consideration could induce him to curve a finger, by way of obeisance to Crowninshield, Duane, and others, he is willing to remain on *his knees*, for any given time, short of that which shall put an end to his existence, in their presence, IF THAT ACT OF CONDESCENSION WOULD PERSUADE THEM NOT TO RUIN HIS NATIVE COUNTRY!!!

The writer would likewise beg leave to assure his countrymen, that *no private, personal*, or *pecuniary* consideration could have induced him to have taken his pen for forming this pamphlet. And those who know him best, can tell that whatever may be his other faults, he is not capable of intentionally *telling what is not true*. He may have unwittingly offended some of his friends in New York. His heart has, however, been right, and his head, he believes, not so absolutely out of the way as some have thought. At any rate, right or wrong, one thing is true, THE AUTHOR'S DAYS HAVE BEEN ANXIOUS, AND HIS NIGHTS HAVE BEEN SLEEPLESS, INCONSEQUENCE OF HIS APPREHENSIONS, ORIGINATING FROM THE PRESENT POLITICAL SITUATION OF HIS COUNTRY. He has debarred himself from the pleasures of social intercourse, has mingled little in society for now near-

ly three years, from his having foreseen, or fancied that he foresaw, that his country was on the verge of that gulph, into which the greatest part of Europe, and a part of Asia has been plunged. A wish to exert his little powers in order to ward off from his own country whatever threatens them with the same fate, has been his sole motive in writing this pamphlet.

Some may ask, if Great Britain be indeed so powerful as to threaten us with destruction; why should she be represented by Federalists as fighting for her existence? I answer, she may be compared to a whale on the verge of a maelstroem; strong indeed, but in danger of being overpowered by the vortex. One stroke of one of her fins would cripple us, and should we attempt to harpoon her, we sink together in the same gulph.

We will state a case, by way of simile, which we hope will induce the warmest partisans for war to think a moment. Allow that Great-Britain is as bad and unprincipled, in every particular, as she has been represented to be. Call her Lucifer, if you please, and Buonaparte Beelzebub (all this by way of a heroick metaphor.) Beelzebub (alias Buonaparte) has longer and stronger talons than Lucifer (alias Great Britain.) Miss "*Freedon*," (or Columbia) stands a "looker on," and because she sees that Beelzebub (Buonaparte) is like to devour Lucifer (Great Britain) she attacks the weakest combatant, *although she knows that the victor will devour her, as it were for a luncheon; a mere bite before dinner.*

A man may possibly sometimes force a smile, with a *barb in his heart*, but I will be serious once more.

I am somewhat apprehensive that my friends, the Federalists, have taken a step too far. If they suppose that our administration would not willingly involve us in a war with Great Britain, it is possible they may mistake. "France has ships and we have men," said Mr. Jefferson, or I am misinformed.—And besides, who does not know, *that without French influence, some men would be of little comparative consequence in this country?* Who does not know that there *are* Americans sufficiently corrupt to command privateers for depredations on our own commerce? Those things are to be thought of, though I tremble to intimate what I think. The men of whom I am suspicious, will no doubt, *stop and lie on their oars*, the moment *they hear the rattle of a watchman;* but will be ready to pounce upon the country, and make America as Switzerland is, and her inhabitants like poor Saunier, as before described, the moment she is lulled to something like security.

Some people are doubtful about the conduct of Great Britain, with regard to Denmark, and I will make another simile; although it is hardly embraced by my subject.

Let us suppose Gen. Washington, with his troops, was lying on the side of the Delaware, and Gen. Howe on the other side. Washington having numbers greatly inferiour, is apprehensive of being attacked by Howe. There are some fishermen's boats which

might serve as transports for the troops of Howe.— They are not General Washington's property, and he has no right to them. But he knows that *if he does not obtain them, his enemy will.* HE OFFERS A FAIR PRICE WHICH THE OWNERS WILL NOT ACCEPT. He then, *to prevent their falling into the hands of his enemy*, and thereby ensuring his own destruction, takes them by force. Should mankind be sufficiently infatuated, it is possible that they may force Great Britain to make indiscriminate warfare on the whole human race, and be justified by the same principle, which would justify me in pushing my best friend, when in danger of drowning, from a plank which would not hold us both above water.

I wish to see my country alarmed, on the alert, and would wish it to make every possible preparation for war. But I do not think that we ought to make *hostility to Great Britain even a pretext for such preparation.* We shall presently be by the ears, if we hold out any thing of the kind: daily irritations will every day widen the breach; and, like Jews, at the siege of Jerusalem, we shall be fighting with, and devouring each other, while our common and powerful enemy is battering our walls and our houses about our ears.

It is quite time, I believe, to bury the hatchet of animosity with England, and with one of my friends, now in Congress, and whom by these presents I greet most cordially, to say that *plunder and desolation follow the footsteps of the conqueror* (Buonaparte) *and the age of the world is changed.*

Those who call themselves good democrats, the author would intreat to believe that there are no gunpowder plots against our liberties in this work. If he has been too sarcastick in this and former productions, he has had no personal motives to be hostile to any of his political opponents; and from many of them he has experienced personal civilities, for which he entertains sentiments of gratitude, and will, to the amount of his leisure and means, be happy to reciprocate. *He has no interest* in conjuring about him a host of enemies; his parents, his kinsmen, his friends, all his temporal hopes, are within the limits of his native country.

Many of his friends have sometimes chidden him for devoting the prime of his life to the unpromising pursuits of an author in America; and some young gentlemen, Federalists, as well as others, have derided him, and attempted to be witty at his expense, when he has declared that not only his principal but *his sole motive* for writing, for some years past has been (not to make money, for authorship is a poor trade, when followed as a profession) but to attempt to open the eyes of his countrymen to the dangers of their political situation. Sometimes he sits down and folds his hands in despair, and then again is roused to action. A man of any sensibility, if he were in a birch bark canoe, near the verge of the cataract of Niagara, and within the *irresistible impetus* of the torrent, would fall at the oars and struggle for life, even against hope; but one of the savage aborigines, whom some true Americans seem to be so fond of imitating, would apply for consolation to his bottle of

New England rum, and then resign himself peaceably to his fate.

With regard to some people, who call themselves *true* and *exclusive* Americans, the author would observe that he dose not wish to see, and hopes that he never may see them harnessed, like so many Dutch horses, or chained, like Buonaparte's conscripts, and whipped, kicked, and cudgelled on board of some French man of war, or transport, by Buonaparte's minions. Should such a thing happen, however, and if our national affairs are conducted in the blind manner they have been, most assuredly will happen, they will obtain no relief by exclaiming that they are *bona fide true Americans*, and are not, nor never were, under British influence. He does not call in question either the spirit or patriotism of the greater part of his countrymen; but in this age of the world, if every man, woman, and child in America possessed the courage of a Hercules, hearts of adamant, and nerves of steel, without correct publick councils, and a timely apprehension of danger, America must fall.

The author has affixed his name to this pamphlet, not from ostentation, but by the advice of some of his friends, who have stated that anonymous pamphlets produce little or no effect upon the publick. He has published it at his own expense, or rather on the credit which he has been able to procure in Philadelphia, is the sole author, and is solely responsible for its contents; and those who properly appreciate his motives, will look with an indulgent eye over its pages.

I have said before, and I now repeat it, that I am apprehensive our government would, willingly plunge us into a war with England, and nothing but the loud voice of publick indignation, echoing from Maine to Louisiana, shouted, thundered in their ears, will deter them a moment.

In case of war, we shall all *be forced to cling to those in power*, as drowning men may to an object at the bottom of the stream; and of consequence, instead of their falling, *they will be fixed more firmly in their seats**. Just or unjust, if a war is declared, we must all march to the field when called upon, or be hanged for traitors†. We must obey orders, even if we knew that we were destroying our *natural allies*, or that every bullet would rebound and pierce our own hearts. "*France has ships and we have men*," says our arch-statesman. True, and France has *men* as well as ships, and *those men will be our masters*, in one year's time, if France becomes our ally. We are playing like a pack of blind puppies, as we are, almost in the very teeth of the tyger. We are a young nation to be sure, but as we are more than nine days old, we ought to begin to see a little.

In ordinary cases I am no friend to direct appeals to the people, because, when they have chosen their

* I wish that some of my Federal friends would do me the honour to peruse the passage, to which this refers a second time.

† Writers on the law of nations, however, are not all agreed on this point. Grotius is of opinion that in an *unjust* war the subject may refuse to obey his superiour. Vattel, however, would call such man a rebel.

rulers, public agents, (or *servants*, if you choose, in the cant of democracy) they ought to abide by their decisions: but in a case like the present, I could wish them to interpose, not by violence, *but by a general expression of public opinion.* It may be right, in a case of fire, to demolish our neighbour's dwelling house, although wrong in common practice.

I believe, that a war with Great Britain will not be quite so popular as some suppose. All the Federal papers in Massachusetts, I believe are opposed to it, and many men, who were true whigs in our former war; and I think, though I hope not, that one of the first terrible consequences will be a division between the northern & southern states, leaving our patriotick brethren in the latter, to manage their own affairs in their own way. Congress themselves are standing on the brink of a precipice. They are taking, I fear, unpopular, as well as unwise steps. The good people of New York, notwithstanding their extraordinary patriotism, would be the first to sacrifice them for measures which they now urge with violence and precipitation. They will find that this flying to the mountains is not so convenient in practice as patriotick in theory. Let them once be served as Copenhagen has been, and I fear, certain true Americans, as they style themselves (by a misnomer) could hardly get their persons ensured for a hundred per cent. ad valorem.

Fox, although once suspected of jacobinism, and although he once cringed at the levee of Buonaparte,

when he opened both eyes, and became thoroughly sensible of the situation of the world, as well as Great Britain, sickened at the prospect—AND DIED! Pitt's heart was broken by contemplating the nature and extent of the evils which threatened his country.—Burke shortened his days, and spent his last moments in making mighty, but effectual struggles, against the Jacobin power, which *threatens us*—Great Britain is *taking counsel from despair*, and snapping at every thing around her, like one in the last stage of hydrophobia; and still we are insensible of our danger, or if we exert ourselves at all, would pinion the hand and pierce the heart of a power *who is forced, from a regard to her own safety, to fight* OUR BATTLES!

But I may be told, as I frequently have been, all this may be true, but the United States have no concern with these affairs; "and what have we to do with Europe?" I reply again, as I have before, that *Europe will have something to do with us*, as is evident to any man who has ever seen a foreigner in our streets, or a foreign vessel at our docks. We are, unfortunately, not of quite so little consequence in their eyes as some of us, in the height of our humility, seem to imagine. France has cast a gloating eye on "young Columbia;" and longs to rifle her charms. The United States are, as these gentlemen, in their cooler moments, are sometimes pleased to allow, the second commercial power in the world, and own a vast and fertile territory; and yet they pretend to think that the U. States were not included in the vast system, which led to the subjugation of Europe? A

word upon that point, which I mean only by way of furnishing others with hints for investigating what I have neither leisure, abilities, documents nor information to investigate myself.

1. What were the circumstances attending the purchase of Louisiana, and did not Buonaparte embark troops intended for that coast, and then countermand them, in consequence of the war in Europe breaking out afresh?

2. Might not the sale take place in consequence of its not being convenient, at that time, to occupy that country with French troops?

3. Was Col. Burr ever intimate with Talleyrand? and has he probably corresponded with him since he left America?

4. Where did Col. Burr procure his great pecuniary resources? Was Gen. Wilkinson formerly connected with him in his conspiracy, and if he is not a pensioner of Spain, why has he not prosecuted J. H. Daviess, Esq. who declared and supported it, I think by proofs, in a late pamphlet, that *Wilkinson has been for years a pensioner of Spain, and was engaged in Burr's conspiracy, and deserted him, and defied Wilkinson to prosecute him.*

5. Why was Hammond, an agent of Genet, put over the head of superiour officers? And was the capture of the Insurgente the cause of the marked enmity to the gallant Truxton? What did Willaumez

mean by a squadron for a secret expedition; and among other sides to Burr's scheme, might there not be a *French side?* And where did he procure his *French arms?*

FINIS.